IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2744 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BANSIBHAI RANJITSINH CHAUHAN

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/05/2000

ORAL JUDGEMENT

#. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order on September 29, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) detaining the petitioner - Bansibhai Ranjitsing Chauhan

under the provisions of the PASA Act.

#. The grounds of detention indicate that the detaining authority took into consideration one offence registered against the petitioner under the Bombay Prohibition Act. The detaining authority also took into consideration the statements of two anonymous witnesses in respect of two incidents that occurred on September 7, 1999 and September 10, 1999 and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioner has challenged this order of detention on various counts. However, learned advocate for the petitioner has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate this submission, learned counsel submitted that the statements of two anonymous witnesses were recorded on September 27, 1999 and September 28, 1999 which were verified by the detaining authority on September 29, 1999 and the order of detention is passed on September 29, 1999. Learned counsel submitted, therefore, that there was no time for the detaining authority to give consideration to the aspect of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22 (5) of the Constitution. Learned counsel for the petitioner therefore, submitted that, in light of the decision of a Division Bench of this Court in the case of Kalidas Chandubhai Kahar v. State of Gujarat & Ors. 1993 (2) GLR 1659, this petition may be allowed.

#. Mr. K.T. Dave, learned AGP, appearing for the respondents has strongly opposed this petition. He submitted that the petitioner is involved in bootlegging activities which is detrimental to public health and public order and therefore, the petition may be dismissed.

#. It is clear from the grounds of detention that the detaining authority has taken into consideration the

statements of two anonymous witnesses. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit-in-reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

#. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar (supra), where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenue of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The order of detention, therefore stands vitiated in the instant case as well and the petition deserves to be allowed.

#. Another aspect that adversely affects the order of detention is that the detenue was judicial custody when the order of detention was passed. The detaining authority was aware about this aspect. However, the detaining authority has not recorded justification for such detention on account of any compelling reasons as stated by the Apex Court in the case of Rameshwar Show, AIR 1964 SC 334, as reiterated in the case of Dharmendra Sugarchand Chelawat vs. Union of India & ors., AIR 1990 SC 1196 and again in the case of Sanjeev Kumar Aggarwal v. Union of India & ors., AIR 1990 SC 1202 and latest in the case of Ahmed Nisar v. State of Tamil Nadu, 1999 SCC (Cri) 1469, Para 46 and therefore, the order of detention cannot be supported as it does not indicate any genuine reason for passing the detention order (for "immediately preventing the petitioner from pursuing his activities").

#. Barring one prohibition case, there does not appear to be any other antecedents in the form of a registered

offence. The statements of anonymous witnesses, for the above reasons, cannot be considered. Keeping all these aspects of this particular case in mind, this Court is of the view that the impugned order cannot be sustained and the petition deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated September 29, 1999 is hereby quashed and set aside. The detenue - Bansibhai Ranjitsinh Chauhan, is ordered to be set at liberty forthwith if not required in any other matter. Rule made absolute with no order as to costs.

[A.L. DAVE, J.]

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